

RESOLUTION NO. 21-03

**A RESOLUTION ADOPTING THE SIDEWALK OBSTRUCTIONS STANDARD OPERATING POLICY**

**WHEREAS**, Oregon City Municipal Code 12.04.120.A. makes it unlawful for any person to place, put, or maintain any obstruction, other than a temporary obstruction, as defined in subsection B of this section, in any public street or alley in the city, without obtaining approval for a right-of-way permit from the City Commission by passage of a resolution; and

**WHEREAS**, Oregon City Municipal Code 12.04.120.B. defines a temporary obstruction as an object placed in a public street, road, or alley for a period of not more than sixty consecutive days; and

**WHEREAS**, Oregon City Municipal Code 12.04.120.B. states a "temporary obstruction" includes, but is not limited to, moving containers and debris dumpsters; and

**WHEREAS**, Oregon City Municipal Code 12.04.120.B.7 provides two types of "temporary obstructions" including short-term and long-term; and

**WHEREAS**, the Public Works Department currently implements Oregon City Municipal Code by permitting permanent and temporary obstructions.

**NOW, THEREFORE, OREGON CITY RESOLVES AS FOLLOWS:**

**Section 1.** That the City Commission, by this Resolution, adopts the standard operating policy for Sidewalk Obstructions.

**Section 2.** That the City Commission may revoke this Resolution at any time it deems in the best interest of the public to do so.

**Section 3.** The effective date shall be the date this resolution is adopted, signed, and approved.

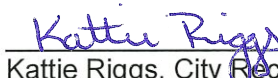
Approved and adopted at a regular meeting of the City Commission held on the 17<sup>th</sup> day of March 2021.



ROCKY SMITH, City Commission President

Attested to this 17<sup>th</sup> day of March 2021:

Approved as to legal sufficiency:



Kattie Riggs, City Recorder



City Attorney



## OREGON CITY PUBLIC WORKS POLICIES & PROCEDURES

**City Code and Public Works Standards References:** OCMC 15.28 – Signs, OCMC 12.08 Public and Street Trees, OCMC 12.04.120 Obstructions, OCMC 12.04.130 Obstructions – Sidewalk Sales, OCMC 10.32 Sight Distance, Department of Justice 2010 ADA Standards for Accessible Design (Chapter 4)

**Subject:** *Sidewalk Obstructions* – Standard Operating Policy (SOP)

**Effective Date:** 03/17/2021

**Prepared By:** Josh Wheeler, P.E.

**Approved:** DW, City Commission

### **Purpose**

Establishes a policy that provides design guidelines and processes for permitting various types of obstructions in the right-of-way. The right-of-way includes the traveled way and furnishing zone of the transportation system which may include the roadway, parking spaces, bicycle lanes, sidewalks, and landscape areas. While the goal is to keep the right-of-way free and clear for the traveling public and for beautification of the lot frontage, there are times where it is necessary to place obstructions within the right-of-way for moving purposes, business purposes, construction purposes, or development constraints. This policy provides direction for implementing Oregon City Municipal Code (OCMC) and a permitting process to document any obstructions.

### **General Information**

OCMC 12.04.120 provides the requirements for permitting obstructions within the right-of-way. Obstructions are categorized as either “permanent” or “temporary.”

Temporary obstructions are those that are not permanently anchored and are easily moveable upon request including, but not limited to, moving pods, construction debris dumpsters, sidewalk seating, parklets, etc.

Awnings are considered a temporary obstruction; however, they fall under an existing policy that allows the structures to be used in the right-of-way as long as they are easily removed from the wall in the case of emergency repair within the right-of-way. Awnings are not part of this policy.

Permanent obstructions are those that are permanently anchored to the ground including, but not limited to, retaining walls, fences, signage, decks, porches, buildings, etc.

Signage is regulated under OCMC 15.28 and relates to sandwich board signs, building wall signs, building wall protruding signs, and post type signs, all of which may impact the right-of-way.

All requests for obstructions shall be kept at a minimum. Obstructions are only granted if following Oregon City Municipal Code, the processes and procedures of this policy, and providing the necessary fees and documents as required. All obstructions must meet the primary criteria of providing a public benefit.

## **Permit Types**

### *Temporary Obstructions (0-60 days)*

Temporary obstructions are those that are not permanently anchored and can be easily moved including, but not limited to, moving pods, debris dumpsters, planters, seating, A-frame (sandwich board) type signs, displays, etc. and are only intended to be used for up to 60 days. A property may be required to obtain a temporary obstruction permit to manage a construction project, especially in areas with zero or minimal lot line setbacks. These types of obstructions are issued a Right-of-Way Permit using the **Temporary Obstruction in ROW Permit fee**. Temporary Obstruction permits shall not be renewed on a regular basis. A permittee may request an extension of a permit, paying an additional fee, if the reason for the request is reasonable and a timeline is set. A temporary permit shall not be renewed more than once. A temporary obstruction permit may cross over calendar years. For example, a permit issued December 1, 2021 may expire January 31, 2022.

### *Long-Term Temporary Obstructions (61-365 days)*

Long-Term Temporary obstructions are those that are not permanently anchored and can be easily moved including, but not limited to, moving pods, debris dumpsters, planters, seating, A-frame (sandwich board) type signs, displays, etc. and are intended to be used for over 61 days up to a full year. These types of obstructions are issued a Right-of-Way Permit using the **Renewable ROW Permit fee**. Long-Term Temporary Renewable Right-of-Way Permits are only valid within a calendar year and do not cross over calendar years. For example, a permit issued on January 15, 2021 may be valid up to December 31, 2021, but a permit issued July 1, 2021 is also only valid up to December 31, 2021. The fee is not adjusted if the use time is reduced.

### *Permanent Obstructions<sup>1</sup>*

Permanent obstructions require approval from the City Commission. Permanent obstructions are revocable by the City at any time and require the property owner/applicant to record an agreement indemnifying the City for any issues caused by the obstruction. They are permanently anchored to the ground including, but not limited to, retaining walls, fences,

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<sup>1</sup> While permanent obstructions are not very likely to obstruct a sidewalk, there may be conflicts on a rare occasion such as a building appendage, wall, or porch stair that could be an unavoidable construction due to space constraints.

signage, decks, porches, buildings, etc. These types of obstructions are issued a Right-of-Way Permit using the **Long-Term Obstruction in ROW Permit fee**.

## **Policy**

All obstructions follow the standard operating procedure listed within this document.

### *Temporary Obstructions (Short-Term – 60 days or less)*

An over-the-counter permit can be obtained for a temporary obstruction in the right-of-way. Temporary obstructions are defined as those obstructions that will last for no more than 60 calendar days.

Temporary obstructions are administered by staff and do not require approval from the City Commission. The permit requires the property owner/applicant to provide a site plan and sign an indemnification agreement. The indemnification expires upon expiration of the permit.

### *Long-Term Temporary Obstructions (61 days to 365 days)*

A permit can be obtained for a long-term temporary obstruction in the right-of-way. Long-term temporary obstructions are defined as those obstructions that will remain for 61-365 calendar days.

In the case of temporary obstructions which are amenities to a business such as seating or planters, or displayed goods and merchandise, the permit type is an annual permit which is renewable each year. This would be similar to a business license for the right to use the public sidewalk or right-of-way for the benefit of the business or property. That permit requires the property owner/applicant to provide a site plan and sign an indemnification agreement which expires upon expiration of the permit. A new indemnification agreement is executed annually with the renewal of the permit if one is renewed. Insurance is also required in the amount of \$1 million per incident/\$2 Million aggregate for all items besides parklets each year.

### *Sidewalk Sales*

Sidewalk sales (display and sale of goods and merchandise) are a type of temporary obstruction that is only allowed in areas designated by the City Commission. They may be classified as short-term temporary (0-60 days) or long-term temporary (61-365 days) depending on the desire of the business. The associated permit fee will be the Temporary Obstruction in ROW fee and Renewable ROW permit fee, respectively, depending on the amount of time desired for the display or sale.

If the sale is desired for 60 days or less, a short-term temporary permit shall be obtained. Indemnity Agreements are required to be executed and expires upon expiration of the permit.

If the sale is desired to remain for 61 days or more, a renewable right-of-way permit is required. Renewable right-of-way permits require annual renewal, indemnification agreements, and insurance in the amount of \$1 million per incident/\$2 million aggregate. These expire at expiration of the permit.

Sidewalk sales and displays shall follow the standard permitting procedure, but they shall include these additional requirements:

1. All displays and sales shall only be provided during business hours.
2. All displays and sales shall be removed from the right-of-way at the end of the regular business day, unless approved as a special event when multiple days are anticipated, and after-hours monitoring is provided.
3. All displays and sales shall only be provided in locations adopted by Resolution by the City Commission.
4. All use areas shall be kept neat and orderly.

### *Parklets*

Parklets are a type of long-term temporary obstruction that is only allowed in areas designated by the City Commission. An over-the-counter permit can be obtained for a long-term temporary obstruction in the right-of-way. Long term temporary obstructions are defined as those obstructions that will remain for 61-365 calendar days.

While a parklet sits within a parking space, it uses the sidewalk for pedestrian connection and may, in some cases, include the sidewalk for part of the seating; therefore, it is discussed in this policy.

Renewable right-of-way permits require annual renewal, a site plan, indemnification agreements, and insurance in the amount of \$3 million per incident/\$4 million aggregate. These expire at expiration of the permit each year.

### *Permanent Obstructions<sup>2</sup>*

A permit is required for any permanent obstruction in the right-of-way; therefore, a permit is required for any permanent obstruction in any portion of a sidewalk within the public right-of-way.

## **Procedure**

### *Process for obtaining an obstruction permit:*

1. Make a request to Public Works – Engineering Division

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<sup>2</sup> While permanent obstructions are not very likely to obstruct a sidewalk, there may be conflicts on a rare occasion such as a building appendage, wall, or porch stair that could be an unavoidable construction due to space constraints.

- i. Staff will determine if the obstruction prevents all other users (vehicles, bicycles, pedestrians) from using the right-of-way or if the applicant has provided an alternate route for those users.
2. Applicant makes an application by providing:
  - i. Right-of-way Application
  - ii. Site Plan
  - iii. Indemnity Agreement (This agreement expires with the termination of the permit AND the obstruction being removed.)
  - iv. Proper Insurance (when required)
3. Applicant pays the following fees:
  - i. Application and Plan Review Fee
  - ii. Inspection Fee
4. Permitting
  - i. City staff reviews the application and site plan.
  - ii. City staff ensures Indemnity Agreement and proper Insurance is provided.
  - iii. City staff provides permit with a specific expiration date based on the applicant's needs and collects fee.
  - iv. City staff provides conditions to each permit.
  - v. City staff closes permit with a final inspection showing the right-of-way has been cleared from all obstructions caused by the permit.

*Possible Conditions of Permits:*

- A. Contact Inspector for installation approval.
- B. Maintain ADA Standards.
- C. Maintain Standards as designated by Oregon Health Authority.
- D. Maintain Standards as designated by Clackamas Fire District No. 1.

*Permit Expiration and Renewal*

- A. City staff advertise program to businesses within the 7<sup>th</sup> and downtown areas annually by January 31.
- B. City staff issues application as they come in.
- C. City staff visits downtown area by March 15 of each year to see who is using right-of-way and compare that to who has a permit.
- D. City staff provides second reminders to those businesses using the right-of-way.
- E. If permit is not obtained after second reminder, code enforcement case begins.
- F. City staff re-inspects right-of-way on July 15 of each year to see who is additionally using right-of-way and compares that to who has a permit. Code enforcement is sought if permit is not obtained.

**Fees**

Fee associated with obstruction permits shall follow the most recently adopted Engineering Fee Schedule. Obstructions are either issued as a Temporary Obstruction in ROW Permit, Permanent Obstruction in ROW Permit, or Renewable ROW Permit.



The Temporary Obstruction in ROW Permit are for those items remaining 60 days or less.

Permanent Obstructions are anticipated to remain for the life of the obstruction, but also require a Revocable clause allowing the City to have the obstruction removed at any time if it is in the public interest.

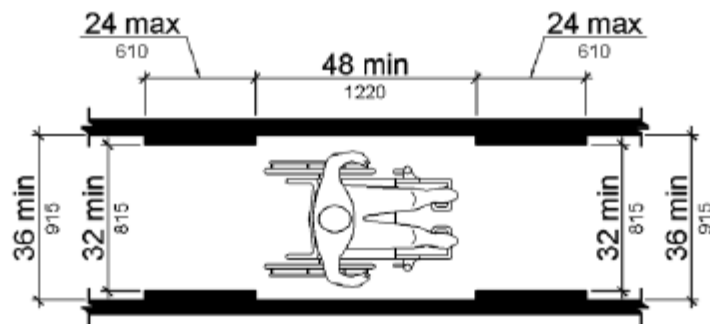
Renewable ROW Permits are for temporary obstructions anticipated to remain 61 to 365 days.

## **Design Guideline**

### *Americans with Disabilities Act Guidelines (ADA)*

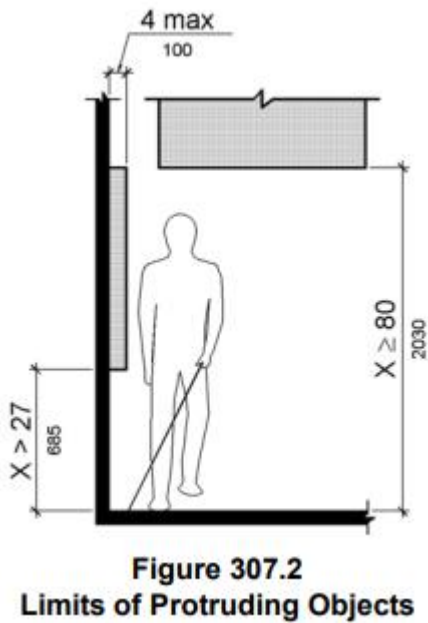
The current applicable standard for design of accessible routes is called the 2010 Standards for Title II and III Facilities: 2004 ADAAG issued by the United States Department of Justice. This policy will assume that current ADA standards will be followed upon any new update to the existing Federal Standard. The standard for accessible routes in the public way is found in Chapter 4 of the 2010 Standards.

The clear width required by ADA is 36 inches minimum (ADAAG 403.5.1)



**Figure 403.5.1 Clear Width of an Accessible Route**

The City of Oregon City, as part of this policy, uses a design standard of 48 inches (4 feet) for a clear width when sidewalk obstructions, whether permanent or temporary, exist or are allowed by permit. The clear width must be available at all times for all potential users.



4 ft. minimum pedestrian way.

Protruding objects for awnings, signage, and other appurtenances shall follow the ADAAG requirements in Figure 307.2.

## **Miscellaneous**

### *Crosswalks and accessible ramps*

In no way shall any obstruction prevent the use of any proper user of the right-of-way from using the crosswalks, accessible ramps, or other features needed for the joint use of this space.

### *Planters*

Planters are only required to be permitted if deemed to be an obstruction by the City Engineer. Most planters sitting adjacent to a bench or along a wall face do not require permitting per OCMC 12.04.

### *Special Event Permits*

Special event permits are issued separate from the obstruction program following a separate permit fee established by the Engineering Fee Schedule. Special Events are intended to be a one-time event that may last multiple hours or days in a row such as street fairs or block parties.

### *Enforcement*

Enforcement is completed by a complaint basis and through engineering inspection in March and July of each year. Inspections can occur through a spot inspection or upon a report of noncompliance. Generally, the indemnification agreement places the liability on the applicant.